



Office of the Staff Judge Advocate LEGAL SERVICES U.S. Army Japan and I Corps (Fwd)

Japanese Drunk Driving Laws

Japanese criminal laws against drunk driving are often times much more severe and more serious than laws of most U.S. states. In Japan, as in some U.S. states, driving under the influence (DUI) and driving while intoxicated (DWI) are separate criminal offenses. In some U.S. states, however, any degree of drunk driving is defined under only one of these terms.

In Japan, a driver is considered to be driving under the influence if they have a blood alcohol content (BAC) of .03% to .07999%. The maximum criminal penalties for DUI can be imprisonment of up to three years or a fine not exceeding ¥500,000. While it is commonly thought that a driver cannot be criminally liable in the U.S. for drinking and driving if their BAC is under .08%, this is not the case in some states. In these states, driving while impaired in the slightest degree is a crime. For these states,

this could mean that a driver could have a BAC of .03% or lower and still be criminally liable. The key is impairment. Impairment can be legally assumed if a driver has a BAC of .08% or higher. In these states, if a driver is charged with this offense, the prosecution must prove the driver's impairment from alcohol through evidence, such as erratic or dangerous driving.

For drivers with a BAC of .08% and above in Japan, they are considered to be driving while intoxicated. The maximum penalties for this crime are imprisonment for up to five years or a fine not exceeding ¥1,000,000. In addition, in Japan, passengers riding in a car driven by a drunk driver can be criminally liable as well, with the same penalties as a Japanese DUI.

The message that Japanese law sends is clear - don't drive drunk or let others drive drunk.

What Happens if You Die Without a Will?

When you create a will, you are able to make choices about who gets your assets in the event of your death. However, what happens if you pass away without making a will?

A common misconception is that the state gets your money. That is not the case if you have any relatives at all. To provide for situations where people die with no will, every state has laws that determine how assets will be distributed. These "intestacy laws" can vary from state to state. For personnel overseas, the laws of the individual's state of legal residence apply.

Generally speaking, intestacy laws tend to provide for the spouse first, then children, parents, brothers and sisters, and various other relatives, in that order. If you have children from a previous marriage or relationship, those children will usually share in your assets as well.

In addition, you may have some "non-probate assets" that will pass outside the will. For example, in your SGLI or private life insurance policy, you already named a beneficiary, so that beneficiary will receive those funds. If you have a joint bank account, the money in that account will automatically go to the joint owner on that account.

In order to have SGLI benefits and life insurance policies provide the money for a trust for your beneficiaries under your will, it is important to designate the beneficiary on those policies as the trustee under your will and state that it is for the purpose of funding the trust established in your will for your named beneficiaries.

The best way to ensure that your final wishes are honored and your family is cared for is to have a will.

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What is a Negligence Claim?

Negligence claims arise when you suffer injury from or your property is negligently damaged or destroyed by a government employee acting within the scope of his or her duties. In such a situation, you may file a claim against the government and possibly be entitled to compensation under the Military Claims Act (MCA).

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Under the MCA, claims for death, personal injury, or property damage may be payable when the injury or damage is caused by negligent or wrongful acts or omissions of military personnel or civilian employees of the Department of the Army or Department of Defense while acting within the scope of their employment under circumstances in which the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. The key is whether a service member or civilian employee was acting in the scope of their employment when the negligent or wrongful act occurred.

For example, a Soldier who hits a private vehicle on a side street while driving a government vehicle in a convoy would be considered acting within the scope of their employment. A Soldier who hits a private vehicle while on their way to a restaurant during a lunch break would not be acting within the scope of their employment. However, only if the owner of the private vehicle were a U.S. resident or citizen would the MCA apply. For foreign, non-U.S. resident nationals, the Foreign Claims Act would apply, which involves different considerations such as the provisions of applicable SOFA agreements.

An important thing to note is that damages under the MCA are limited. Generally, a contributory negligence calculus will be applied. This means that if the claimant was even partially at fault for the accident, injury, death, or damage, any payment that the claimant may receive will be reduced with the corresponding percentage that is deemed their responsibility. Under the MCA, punitive damages are not available.

If you have any questions, comments, or suggestions, please contact the Legal Assistance Office at 263-4698.

3 Month Extension for Puerto Rican Birth Certificates

Puerto Rico has extended the validity of current Puerto Rico birth certificates for three more months, through 30 September, 2010, to provide for a transition period as they begin issuing new, more secure birth certificates, starting 1 July, 2010. Instructions on how to apply, as well as information on Puerto Rico's new birth certificate law, can be found at: www.prfaa.com/birthcertificates/ and www.prfaa.com/certificadosdenacimiento/.

Correction

In the June newsletter, in an article entitled "Individual Taxpayer Identification Number (ITIN) and DEERS enrollment," the article mistakenly stated that the DEERS office could issue foreign identification numbers (FINs) to the foreign spouses of Servicemembers. It should have read that the DEERS office cannot issue FINs to foreign spouses of Servicemembers.

